

1 **STATE OF NEW HAMPSHIRE**
2 **SITE EVALUATION COMMITTEE**

3
4 **October 26, 2018 - 6:42 p.m.**
5 49 Donovan Street
6 Concord, New Hampshire

7 *{Electronically filed with SEC 10-31-18}*

8 **IN RE: SEC DOCKET NO. 2015-04**
9 **Application of Public**
10 **Service of New Hampshire**
11 **d/b/a Eversource**
12 **Energy for Certificate**
13 **of Site and Facility**
14 **(Procedural Hearing on Exhibits)**

15 **PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:**

16 **Chmn. Patricia Weathersby** Public Member
17 *(Presiding Officer)*

18 **ALSO PRESENT FOR THE SEC:**

19 Michael J. Iacopino, Esq. Counsel for SEC
20 *(Brennan, Lenehan, Iacopino & Hickey)*

21 Pamela G. Monroe, SEC Administrator

22
23 *(No Appearances Taken)*

24 **COURT REPORTER: Cynthia Foster, LCR No. 14**

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I N D E X

Objections to Exhibits	4
Record Requests	15

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E X H I B I T S

EXHIBIT ID	D E S C R I P T I O N	PAGE NO.
APP 227	Caption revised	4
JCT 1-20	Discussion	4
JCT 4	Discussion	10
JCT 7	Full exhibit	13

P R O C E E D I N G S

1
2 PRESIDING OFFICER WEATHERSBY: Okay. We
3 are going to see if anyone has any objections to
4 any of the exhibits. Attorney Patch, we'll go
5 in our usual order here and start with you.

6 MR. PATCH: The only objections that we
7 have are the ones that are essentially noted in
8 the motion that we filed jointly with CLF and
9 Newington so I don't expect that you'd address
10 those now but exhibits that were late to the DES
11 filings that came after February 28th really are
12 what they amount to, but other than that, we
13 don't have any.

14 PRESIDING OFFICER WEATHERSBY: Thank you.
15 Understood. We will not be addressing that
16 motion tonight. Attorney Geiger?

17 MS. GEIGER: Yes, thank you. I don't have
18 any objections to any of the Applicant's
19 exhibits coming into the record, but I would
20 respectfully ask that Applicant's Exhibit 227,
21 the caption or the title of that document be
22 revised to reflect that it isn't Newington's
23 current master plan. It's Newington's 2010/2020
24 Master Plan with the 2015 Amendment found at the

1 very end on pages 481 and 482. I just don't
2 want the Committee to be misled when they refer
3 to that document or examine it without noting
4 that there has been an amendment, and the
5 amendment is in the very, very back of the
6 document.

7 MR. NEEDLEMAN: No objection.

8 MR. IACOPINO: So we'll call that, we're
9 just add to that hyphen 2010 dash 2020 with 2015
10 addition.

11 MS. GEIGER: Right. And Mr. Hebert would
12 like the title also to note pages 481 and 482 at
13 the end just to be clear that that's where the
14 amendment is found.

15 MR. IACOPINO: Give us that number again?

16 MS. GEIGER: Pages 481 and 482.

17 MR. IACOPINO: We'll put that in
18 parentheses at the end of that title.

19 MS. GEIGER: Thank you very much for doing
20 that.

21 PRESIDING OFFICER WEATHERSBY: Okay.
22 Attorney Brown? Durham Residents?

23 MS. BROWN: No objection to parties'
24 exhibits.

1 PRESIDING OFFICER WEATHERSBY: Sorry, no
2 objections to any exhibits?

3 MS. BROWN: That's correct.

4 PRESIDING OFFICER WEATHERSBY: Thank you.
5 Ms. Mackie?

6 MS. MACKIE: We have no objections to
7 anyone's exhibits.

8 PRESIDING OFFICER WEATHERSBY: Thank you,
9 Ms. Mackie. Ms. Frink?

10 MS. BROWN: She was sick and went home.

11 MR. NEEDLEMAN: Madam Chair, I'll note that
12 we did exchange notes with Ms. Frink and told
13 her we didn't object to any of hers and she said
14 she didn't object to any of ours, for what
15 that's worth.

16 MR. IACOPINO: Thank you.

17 PRESIDING OFFICER WEATHERSBY: Thank you.
18 Counsel for the Public.

19 MR. ASLIN: I have no objections. I do
20 have a question just to so it's clear on the
21 record. I don't see any of the Joyce Crowley
22 exhibits in the final exhibit list, I presume
23 because they've withdrawn as a party, but I just
24 wanted to make sure that's in the record, how

1 they're treated.

2 MR. NEEDLEMAN: I was also going to speak
3 to that.

4 MR. IACOPINO: I guess that's why they're
5 not in there. I didn't actually prepare this
6 myself, but -- so did you have an objection to
7 them not being there or just wanted to note that
8 they're not there?

9 MR. ASLIN: I don't think I have an
10 objection, and they will appear in the
11 transcript where they're referenced, but I'm not
12 sure that they're necessary given that the
13 party's withdrawn.

14 MR. NEEDLEMAN: One of our requests was
15 going to be that they be struck, that the
16 agreement that we reached with them resolved all
17 of their concerns related to the Project to
18 their satisfaction so we don't think that that
19 should now be counted as evidence in the
20 proceeding.

21 MR. IACOPINO: I think we should around and
22 ask if anybody would object to them being
23 struck, and we'll deal with that first, and then
24 what I can do is whether they're stricken or not

1 we can add them to the list with the appropriate
2 thing next to them and say "stricken" or
3 whatever, just in case somebody is reading the
4 transcript and starts trying to find what are
5 they talking about and then they'll see from the
6 list that it was stricken. But whether or not
7 there's objections to the Motion to Strike, we
8 should go around the room.

9 PRESIDING OFFICER WEATHERSBY: Attorney
10 Needleman has made a motion to strike the
11 Crowley Joyce Revocable Trust exhibits.
12 Attorney Patch, do you have any objection?

13 MR. PATCH: I was just trying to look for
14 their list. I know it's not in the one we got
15 by email, and I just wanted to sort of make sure
16 that, I don't think I asked any questions
17 related to that, but --

18 ADMINISTRATOR MONROE: I have it that they
19 have Exhibits 1 through 20.

20 MR. PATCH: I talked briefly with Mr.
21 Needleman just a couple of minutes ago about
22 whether we should strike the draft of the Durham
23 MOU, but given the fact that it's referred to in
24 the transcript it seemed to make sense to keep

1 it. So given that kind of view of the Durham
2 Draft MOU I'm just wondering about these
3 exhibits, you know, because I think, Mr.
4 Iacopino, you said there would be some note I
5 guess made in the transcripts, but I just wonder
6 if somebody goes back a few years from now and
7 tries to look at the record and there are no
8 exhibits that have been referred to in the
9 transcript how that will appear.

10 MR. IACOPINO: No, I wasn't talking about
11 doing anything in the transcript, other than the
12 transcript we're making right now, but in the
13 Master Exhibit List, we would add those exhibits
14 in there with the word "stricken" after them so
15 that there's sort of a master document in the
16 file somebody can refer to if they have
17 questions about those particular exhibits.

18 MR. PATCH: And would they be able to find
19 them somewhere then?

20 MR. IACOPINO: Well, they'll be with the
21 Site Evaluation Committee for as long as we're
22 required to retain records. They've already
23 been submitted to us.

24 MR. PATCH: The actual exhibits will be

1 there?

2 MR. IACOPINO: Yes.

3 MR. PATCH: Okay. That reassures me then.

4 PRESIDING OFFICER WEATHERSBY: They won't
5 be part of the official record.

6 MR. PATCH: Right, but they'll be somewhere
7 in the file if somebody in the archives looks
8 for them ten years from now.

9 MR. IACOPINO: Should be the case, yes.

10 PRESIDING OFFICER WEATHERSBY: The name of
11 the exhibits will be on list with the word
12 "stricken" next to them, but the exhibits will
13 not be part of the record, but if someone wants
14 to go hunting them for them, they will be able
15 to find them at the offices of the SEC.

16 MR. PATCH: I mean, the only one that gives
17 me a little bit of hesitation, I'm looking at
18 Exhibit 4, JCT Exhibit 4, report of the PUC in
19 order number 5881. I don't remember what that
20 says.

21 ADMINISTRATOR MONROE: JCT 4?

22 MR. PATCH: Yes, Exhibit 4.

23 ADMINISTRATOR MONROE: It looks like it's a
24 deed between New Hampshire Electric Company, the

1 Badgers, and the Flynnns.

2 MR. IACOPINO: It's actually a PUC report.
3 Actually a PUC report where, it says Petition
4 for the Right-of-Way and it's dated 1951.

5 MR. PATCH: I don't know if there's
6 anything in there that historically might be
7 useful so I don't know. That's the only
8 hesitancy I guess I would have. And the things
9 like Exhibit 16, Revised Environmental Map.
10 Now, I assume that's the same as what's cited in
11 parentheses or is that a different one?

12 PRESIDING OFFICER WEATHERSBY: Attorney
13 Patch, I think what might be good is we're going
14 to skip you. You can look at these exhibits and
15 see if you want them in and you can then
16 advocate for them.

17 MR. PATCH: Okay.

18 PRESIDING OFFICER WEATHERSBY: Attorney
19 Geiger?

20 MS. GEIGER: I have the same issue as
21 Attorney Patch. I need time to look at them to
22 see if there's something of significance to the
23 Town of Newington. Mr. Hebert has concerns
24 about those documents for a couple of different

1 reasons, and so I'd like a minute just to look
2 them over to see what they are and refresh my
3 memory, just to focus in on them.

4 PRESIDING OFFICER WEATHERSBY: Why don't
5 you take a few minutes to do that as well.

6 ADMINISTRATOR MONROE: Does everybody have
7 Exhibit 1 through 20 Crowley Joyce? Attorney
8 Brown?

9 MS. BROWN: I forgot. What was the
10 question? Whether I object to having them
11 struck? I don't. Thank you.

12 PRESIDING OFFICER WEATHERSBY: Do you have
13 any objection to having the Crowley Joyce
14 exhibits struck from the record?

15 MS. BROWN: We don't. Thank you.

16 PRESIDING OFFICER WEATHERSBY: Ms. Mackie?

17 MS. MACKIE: We have no objection.

18 PRESIDING OFFICER WEATHERSBY: Mr. Aslin?

19 MR. ASLIN: I don't have any objections
20 either to striking them. I certainly didn't use
21 any of them in my cross-exam so given that the
22 party's withdrawn and those issues have been
23 resolved, I think many of these are public
24 record documents that exist in the world already

1 so I have no objection.

2 PRESIDING OFFICER WEATHERSBY: Attorney
3 Patch?

4 MR. PATCH: Yes. Thank you. I don't have
5 any objection. I think to the extent that the
6 Exhibit 4, JCT Exhibit 4, is a PUC report and
7 order, if I have more time to go through it and
8 think there's something useful there I could ask
9 you to take administrative notice of it. So
10 given that, I think I'll say I had no objection.

11 PRESIDING OFFICER WEATHERSBY: Thank you.
12 Attorney Geiger?

13 MS. GEIGER: I'm having some technical
14 difficulties in accessing these documents for
15 some reason.

16 MR. ASLIN: Can I help?

17 PRESIDING OFFICER WEATHERSBY: Could we
18 help or pull something up for you?

19 MR. HEBERT: It's the photos that he had.

20 PRESIDING OFFICER WEATHERSBY: Exhibit 7?

21 MS. GEIGER: Newington would not object to
22 striking all of the Crowley Joyce exhibits
23 except for JCT number 7 which is shoreline
24 photos showing the Crowley Joyce Revocable Trust

1 property. I think it's relevant information and
2 the photo speaks for itself, notwithstanding
3 that there was not a witness that adopted it.

4 MR. IACOPINO: It's two pictures, right?
5 Any objection to leaving them in the record from
6 the Applicant?

7 MR. NEEDLEMAN: I'm not sure it matters
8 that much. I will say we submitted the
9 Committee's requested photos of the Bay from
10 Newington which does a better job at this point
11 of portraying this, and I'm not even sure it was
12 used. So I guess we don't need to argue about
13 it at this late hour. I just don't see the need
14 to keep it in.

15 MR. ASLIN: I do recall it being used if
16 that's of any relevance. I recall Attorney
17 Richardson using it during cross-examination to
18 point out the location of potential concrete
19 mattresses on the Newington side.

20 PRESIDING OFFICER WEATHERSBY: I recall
21 that as well, with the cables coming up, and I
22 do recall looking at this photo in connection
23 with the testimony.

24 I think we will not strike this one from

1 the record. We'll leave it in. The Committee
2 may find it helpful.

3 MR. IACOPINO: So what we'll do with the
4 exhibit list now is we'll put all the other ones
5 in, they'll have the word "struck" next to them,
6 and this one will be a full exhibit based on the
7 Presiding Officer's ruling.

8 Okay. I have questions for the Applicant
9 about responses to record requests. Mr.
10 Needleman, you answered one of my questions.
11 We're expecting a photosimulation. This was
12 requested by Mr. Way on Day 9. The other side
13 of the bay from the photosimulation that we
14 have. We have a photosim for, I believe, the
15 Durham side but not for the Newington side. Do
16 I have that backwards?

17 MR. NEEDLEMAN: Applicant's 269. I think
18 it was filed.

19 MR. IACOPINO: Okay. On Day 6 there was a
20 request for any notes or further information.
21 I'm just going to throw this out there. I don't
22 think it's probably relevant at this point
23 because Crowley Joyce has withdrawn, but notes
24 or further information why notice was not

1 required under Wetlands Rule 304.04.

2 MR. NEEDLEMAN: Yes. We didn't pursue that
3 because we settled.

4 PRESIDING OFFICER WEATHERSBY: And you
5 filed the Autotransformer route. Do you
6 remember which number that was given?

7 MR. NEEDLEMAN: Wasn't it given a Committee
8 number?

9 MR. IACOPINO: May have been. We have
10 three numbers for that one. That's my list.

11 MR. ASLIN: Did the Applicant indicate any
12 objections? I missed that part.

13 MR. IACOPINO: Haven't got there. Do you
14 have any objections?

15 MR. NEEDLEMAN: No. We're all set.

16 PRESIDING OFFICER WEATHERSBY: Okay. We
17 will close the record. Record is now closed.

18 ADMINISTRATOR MONROE: I did mention to a
19 few of you, but the court reporters have agreed
20 to expedite the transcripts. They'll be coming
21 in as they're completed, but they're going to
22 work their little fingers to the bone, and
23 they're going to do their damndest to get them
24 in here by Friday, November 2nd.

1 MS. GEIGER: I'm just clarifying when the
2 briefs are due.

3 PRESIDING OFFICER WEATHERSBY: Parties and
4 CFP 14 days from today and 21 days for the
5 Applicant. Let's double-check.

6 ADMINISTRATOR MONROE: Revised Procedural
7 Order was issued on May 31st, 2018, and it
8 states that Counsel for the Public and
9 Intervenors shall file briefs within 14 days of
10 the close of the record, and then the Applicant
11 shall file its brief within 21 days of closing
12 the record.

13 MR. ASLIN: Given that it is a Friday at
14 whatever time it is, normally 14 days would
15 count beginning tomorrow, would end on a
16 Saturday. Are we in agreement that under the
17 rules that that would kick us to Monday for the
18 filing of those? Whatever Monday that is.

19 MR. IACOPINO: Typically that would do that
20 if it lands on a Saturday.

21 MR. ASLIN: I just want everyone to be
22 clear on what the date is so we're not confused.

23 MR. HERBERT: Monday is October 11.
24 Actually November 11th.

1 MR. ASLIN: That Monday, it turns out, is
2 Veterans Day.

3 MR. IACOPINO: The Applicant falls on a
4 Saturday as well.

5 PRESIDING OFFICER WEATHERSBY: The 12th is
6 Veterans Day, and that's the holiday. And the
7 Applicant has 19th. Give them 7 days. So
8 Intervenors and Counsel for the Public on the
9 13th of November, Applicant on the 20th. And
10 then we have deliberations the week of the 25th.

11 PRESIDING OFFICER WEATHERSBY: Just so
12 Cindy has that, so the Counsel for the Public
13 and Intervenor briefs will be due November 13th
14 and the Applicant's brief will be due November
15 20th.

16 MR. PATCH: No page limits.

17 MR. IACOPINO: Please be reasonable.
18 Anything over ten pages, we want a table of
19 contents. Okay.

20 PRESIDING OFFICER WEATHERSBY: Anything
21 else? Okay. We are adjourned.

22 MR. NEEDLEMAN: Thank you.

23 MR. PATCH: Thank you.

24 (Hearing ended at 7:10 p.m.)

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C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Licensed Court Reporter, duly authorized to practice Shorthand Court Reporting in the State of New Hampshire, hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes of the hearing for use in the matter indicated on the title sheet, as to which a transcript was duly ordered;

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

Dated at West Lebanon, New Hampshire, this 31st day of October, 2018.

Cynthia Foster, LCR